

Water Division

TRIBAL TRAINING

E-ENTERPRISE PROJECT: EPA / TRIBAL WATER QUALITY DATA ASSESSMENT TOOL PILOT PROJECT

As a follow-up to the March 2016 RTOC Meeting hosted in Dallas, Texas, EPA Region 6, in partnership with EPA Headquarters and 20 tribes nationally (11 Region 6) are piloting the development of the Water Quality Assessment Tool (ATTAINS). The ATTAINS tool will allow tribes to report national data on the status of water quality on tribal lands. The ATTAINS Pilot workgroup had the Kick-Off Training in December 1-2, 2016, at the Fall RTOC. The training provided tribal staff on the ATTAINS workgroup with information on water quality standards, QAPP development, and assessment methodologies. The second part of this training will be in the Summer 2017, when EPA and Tribal staff will get hands on experience building an ATTAINS report for their respective tribal program. **Samuel Reynolds 214-665-6682; Alex Nunez, 214-665-7126; Laura Hunt, 214-665-9729; Lindsey Griffin, 214-665-2797; Rob Cook, 214-665-7141; Mike Schaub, 214-665-7314; Laura Shumway 202-566-2514**

NPDES PERMITS

STATUS OF NPDES PERMITS

During fiscal year 2017, EPA Region 6 will or may be working on several NPDES permits in New Mexico and Louisiana located on or in proximity upstream to potentially affected Tribes: New Mexico: Roca Honda Resources Uranium Mine; Chama WWTP, Espanola WWTP; Albuquerque-Bernalillo Co. WUA WWTP, and Taos WWTP; Louisiana: Chitimacha WWTP and Choctaw Pines Casino WWTP. General Permits already proposed or in the works include: Pesticides General Permit, Storm Water Associated with Construction Activities General Permit (CGP); Hydrostatic Test Temporary Discharge General Permit (OK & TX) and a general permit for Municipal Separate Storm Sewer Systems (MS4) in New Mexico (primarily for those in the Santa Fe, Las Cruces, El Paso, Los Lunas, and Farmington areas). Affected tribes will receive copies of the draft permits at the time of proposal for review during the public comment period or CWA Section 401 certification as appropriate. Tribal consultation will be available to the affected tribes. **Brent Larsen, 214-665-7523**

LOS ALAMOS COUNTY MUNICIPAL SEPARATE STORM SEWER (MS4) DESIGNATION PETITION

EPA proposed to designate portions of Los Alamos County as a municipal separate storm sewer system (MS4), which establishes requirements to reduce pollution carried by storm water run-off and will help restore waters in the area that are too polluted. The proposed designation is in response to a petition filed by Amigos Bravos for a determination that storm water discharges in Los Alamos County are contributing to violations of water quality standards in certain impaired waters and therefore, require a discharge permit and designation as an MS4. After review of the petition, information provided by LANL and Los Alamos County, and the state's water quality assessment, EPA made a preliminary determination that stormwater discharges on Los Alamos National Lab (LANL) property and urban portions of Los Alamos County result in exceedances of state water quality standards. The proposal was published in the Federal Register on March

17, 2015. A final decision is expected spring 2017, and if decision is to designate, development of a permit(s) would follow. *Nasim Jahan 214-665-7522*

LOS ALAMOS NATIONAL LABORATORY (LANL) NPDES PERMIT

EPA Region 6 proposed reissuance of the NPDES permit for stormwater discharges from Los Alamos National Laboratory in Los Alamos, New Mexico in March 2015 and the extended public comment period ended June 25, 2015. The individual storm water permit regulates storm water runoff from about 400 Solid Waste Management Units (SWMUs) and Areas of Concern. LANL has installed over 1000 BMPs to eliminate or mitigate runoff from those sites. The current permit has been administratively continued. EPA has been working with stakeholders including permittees, environmental/citizens groups and New Mexico Environment Department over the last year in the development of permit conditions. EPA held a public meeting prior on the proposal in Los Alamos on May 6, 2015. Final action on the permit is expected spring 2017. *Isaac Chen 214-665-7364*

UNDERGROUND INJECTION CONTROL

INDUCED SEISMICITY

Over the last several years, there have been abrupt increases in earthquakes in some oil and gas production areas. These areas include Arkansas, Kansas, Oklahoma, and Texas, as well as other oil and gas producing states. Of particular note is a dramatic increase in both the numbers of earthquakes in Oklahoma and Kansas, along with their magnitudes. EPA finalized the Underground Injection Control (UIC) National Technical Workgroup (NTW) report, *Minimizing and Managing Potential Impacts of Injection-Induced Seismicity from Class II Disposal Wells: Practical Approaches*. This report was developed cooperatively with state members of the workgroup to protect underground sources of drinking water and was released as final in February 2015. Since release of the report, EPA Region 6 has been providing focused technical support to the Oklahoma Corporation Commission (OCC) in its efforts to address potential induced seismicity. In an effort to stem the increasing earthquake trends, OCC has periodically increased its level of response, culminating in a broad injection volume restriction area for disposal wells after several damaging Magnitude 4 events early this year. The Region ramped up its level of concern over the level of seismicity in Oklahoma and North Texas through its 2015 annual evaluations of the UIC programs for OCC and the Railroad Commission of Texas. Both of these reports generated substantial media coverage because of seismicity concerns. The Region also responded quickly over the Labor Day weekend to shut in Osage disposal wells near the 5.8 Magnitude event near Pawnee, Oklahoma. Since September 2016, the frequency of events has continued to sharply decline and no magnitude 4+ events have occurred since November. The Region is cautiously optimistic about this trend, and recent OCC actions. *Philip Dellinger, 214-665-8324*

DRINKING WATER

REVISED TOTAL COLIFORM RULE AND LEAD AND COPPER RULE

Since April 1, 2016, the Revised Total Coliform Rule (RTCR) became effective for all public water systems. The RTCR replaces the old Total Coliform Rule (TCR) where some of the

requirements remain the same (such as frequency and number of routine sampling) and some are new (such as level 1 and 2 assessments). Region 6 and its Technical Assistance Providers continues to deliver RTOC and other regulatory training (such as the Lead and Copper Rule) to tribes and provided technical assistance to help tribes for new rules and refresh tribes on older rules. All tribal water systems under Region 6 completed their RTOC Sampling Plans and all tribal water systems are monitoring under RTOC accordingly. Regarding the Lead and Copper Rule, Region 6 shared the February 2016 Sampling Method Clarification Protocol with tribes and encouraged the tribes to take additional (special) samples when their routine lead sample results approach half (7.5 ppb) of the action level (15 ppb). The purpose of this is to encourage tribes to be proactive in preventing an action level exceedance. Region 6 appreciates the collaboration and cooperation of tribes on the implementation of these two rules, which have been at the forefront of Drinking Water discussions in 2016 and in the coming year. ***Meaghan Bresnahan, 214-665-8354, Andrea Abshire, 214-665-6076, Jatin Mistry, 214-665-7483, John Baker, 214-665-7542***

SANITARY SURVEYS AND OVERSIGHT

On the Sanitary Survey front, Region 6 and its technical assistance providers continue to conduct surveys every three years under the Groundwater Rule (GWR) and Surface Water Treatment Rules (SWTRs). In 2016, Region 6 developed a more efficient method and database for tracking, organizing, and updating significant deficiencies; this facilitated our ability to reach out to tribes and provide reminders and technical assistance (on the phone or on site) on correcting significant deficiencies at the water systems. Region 6 appreciates the photos and documentation that have been submitted to date to clear the deficiencies. This effort is helping prevent potential 'failure to correct deficiencies' violations. In addition, Region 6 has been conducting compliance reviews on tribal drinking water projects submitted by the Tribe and/or IHS. These reviews allow EPA and the Tribe and IHS to proactively collaborate to prevent compliance issues before project construction begins. EPA encourages Tribes to notify EPA when there are water system modifications or new construction and to continue submitting drinking water infrastructure design projects for EPA compliance reviews. All of these activities, including the trainings that Region 6 provided, are part of Region 6's increased oversight of states and tribal drinking water systems to ensure compliance under the Safe Drinking Water Act. ***Miguel Moreno, 915-533-7273, Meaghan Bresnahan, 214-665-8354, Jose Lugo-Figueroa, 214-665-6462, Jose Rodriguez, 214-665-8087, Jatin Mistry, 214-665-7483, Andy Waite, 214-665-7332, John Baker, 214-665-7542***

REVIEW OF WATER INFRASTRUCTURE PLANS

If a tribe is considering having new infrastructure built or added to current infrastructure, such as a well or a treatment system, EPA strongly encourages the tribe and/or IHS to send their engineering design plans to EPA Region 6 for compliance reviews. We review these plans to make sure the new infrastructure will be in line with the regulations and so that the system does not receive significant deficiencies during subsequent sanitary surveys. The point of contact for plan reviews is Jose Lugo-Figueroa, who can be reached at lugo-figueroa.jose@epa.gov or 214-665-6476; please send Jose design plans in advance of building new infrastructure and we will work with the tribe to help make sure their new infrastructure produces SDWA-compliant water. ***Jose Lugo-Figueroa, 214-665-6462, Jose Rodriguez, 214-665-8087, Meaghan Bresnahan, 214-665-8354***

TRIBAL FUNDING

STATE REVOLVING FUNDS TRIBAL SET-ASIDES

The Clean Water Indian Set Aside (CWISA) and the Drinking Water Tribal Set Aside (DWTSA) completed the FY 2016 award process. The Region's 2016 CWISA program awarded \$2,079,700. Two projects that were selected for Oklahoma's IHS office; Muscogee (Creek) Nation (\$494,200) and the Apache Tribes (\$36,500). Five projects that were selected for Albuquerque's IHS office; Pueblo of Santa Clara (\$720,000), Pueblo of Isleta (\$400,000), Pueblo de Cochiti (\$239,000), Pueblo of Laguna (\$144,000), and Jicarilla Apache Nation (\$46,000).

The Region's 2016 DWTSA program awarded \$1,777,000. Two projects that were selected for Oklahoma's IHS office and the Cherokee Nation (Kenwood) (\$202,000 and \$324,000). Ten projects that were selected for Albuquerque's IHS office; Pueblo of Zia (\$523,000), Pueblo of Isleta (\$300,000), Pueblo of Santa Ana (\$108,000), Pueblo of Taos (\$15,000), Pueblo of Pojoaque (\$81,000), Pueblo of Santa Clara (\$33,000), Pueblo of Nambe (\$107,000), Pueblo of Picuris (\$29,000 and \$26,000) and Pueblo of Jicarilla Apache Nation (\$29,000). EPA R6 worked with two Indian Health Service offices; Albuquerque and Oklahoma City. Final awards to the successful Tribal recipients of the projects selected and the associated CWISA and/or DWTSA was funded by September 2016.

CWISA and DWTSA have not carried the FY 2017 project selection process beyond the Indian Health Service's (IHS) Sanitation Deficiency System (SDS) list. The Region's 2017 CWISA and DWTSA programs are allocated by percentage based on the Clean Water and Drinking Water State Revolving Fund (SRF) Program. The SRF program will not release allocation numbers during this Continuing Resolution time frame. Last years' funding for FY 2016 was based on the minimum (or floor) allocation that was negotiated to minimize the impact of SRFs' decreasing allocations. FY 16 was the first year that the set aside percentage would have fell below \$30 million mark for CWSRF and \$20 million mark for DWSRF. Based on last year's schedule, final awards to the potential Tribal recipients of the SDS projects selected are still on target to be funded by September 2017. *Maurice Rawls, 214-665-8049, Dena Hurst, 214-665-7283, Sal Gandara, 214-665-3194, Anisa Pjetrovic, 214-665-6446*

WETLAND PROGRAM DEVELOPMENT GRANTS

The 104(b)(3) Wetland Program Development Grants are competitive grants that are part of the EPA Enhancing State and Tribal Programs effort. Funds from these grants can be used to develop and implement a Wetlands Program Plan (WPP). The Core Elements Framework (CEF) outlines the 4 core elements a WPP may include, which are: Monitoring and Assessment, Regulatory Activities including 401 Certification, Voluntary Restoration and Protection, and Water Quality Standards for Wetlands. However, the development of a WPP allows tribes to implement the CEF based on their individual program goals and available resources. The Region 6 Wetlands Program will be soliciting new grant proposals in FY2017. Our grants are solicited on a two-year cycle. For more information, please see

<https://www.epa.gov/wetlands/wetland-program-development-grants> and <https://www.epa.gov/wetlands/what-enhancing-state-and-tribal-programs-effort>

Ten percent of total national WPDG funds will be set aside for a national, tribal-only competition. (About \$1.3 million per year). Tribes may apply to both RFPs with the same (or

different) proposals. This year, the RFP will go out approximately 1-2 months after the general, State/Tribe regional RFP. We anticipate the RFPs to be very similar in regards to requirements and selection criteria. Proposals are due April 14, 2017. For the link to the Wetlands Program Grants Solicitation please click the (www.grants.gov/web/grants/view-opportunity.html?oppId=291862)

Alison Fontenot, 214-665-7482; Wanda Boyd, 214-665-6696; Sondra McDonald, 214-665-7187

TREATMENT IN A SIMILAR MANNER AS A STATE FOR CLEAN WATER ACT GRANTS

TAS DEADLINE FOR CLEAN WATER ACT SECTION 319(H) AND 106

The EPA Region 6 deadline date for submitting applications for TAS for FY 2018 CWA Section 319(h) funding is April 30, 2017. *Samuel Reynolds, 214-665-6682*

ABSENTEE SHAWNEE TAS FOR CLEAN WATER ACT 319(H)

Absentee Shawnee Tribe submitted an application May 2016 for CWA 319(h) Treatment in a similar manner as a State (TAS) non-point source program. The management plan and assessment report was approved on 2 November 2016. The goal is to have Absentee Shawnee's 319(h) TAS application approved by the end of FY 2017. *Samuel Reynolds, 214-665-6682*

TONKAWA TRIBE TAS CLEAN WATER ACT SECTION 319(H)

Tonkawa Tribe submitted a Treatment in a similar manner as a State (TAS) application for the CWA Section 319(h) nonpoint source program in June 2016. The management plan and assessment report was approved on 2 November 2016. The goal is to have Tonkawa's 319(h) TAS application approved by the end of FY 2017. *Samuel Reynolds, 214-665-6682*

PUEBLO OF LAGUNA TAS FOR CLEAN WATER ACT 319(H)

The Pueblo of Laguna submitted a Treatment in a similar manner as a State (TAS) application for CWA Section 319(h) nonpoint source program in June 2016. We are awaiting the tribe's response to comments on their management and assessment report. *Samuel Reynolds, 214-665-6682*

THLOPHTHOCCO TRIBAL TOWN

The Thlopthlocco Tribal Town submitted a Treatment in a similar manner as a State (TAS) application for CWA 106 on 27 January 2017. The application is under review with a scheduled approval date of 1 May 2017. *Samuel Reynolds, 214-665-6682*

PUEBLO OF ZIA

The Pueblo of Zia submitted a Treatment in a similar manner as a State (TAS) application for CWA 106 on 23 January 2017. The application is under review with a scheduled approval date of 1 May 2017. *Samuel Reynolds, 214-665-6682*

TREATMENT IN A SIMILAR MANNER AS A STATE FOR REGULATORY PROGRAMS

TREATMENT IN A SIMILAR MANNER AS A STATE (TAS) DETERMINATIONS FOR CLEAN WATER ACT §303(C) AND §401

Region 6 is reviewing an application for Treatment-In-A-Similar-Manner-As-A-State (TAS) for the Clean Water Act (CWA) water quality standards (§303(c)) and water quality certification (§401) programs from the Citizen Potawatomi Nation (submitted in fall 2014). Approval of a TAS application means that the Indian tribe is eligible to administer the water quality standards program under CWA §303(c), and is likewise eligible for purposes of certification under CWA §401. EPA conducted a public comment and Tribal consultation period on the Citizen Potawatomi Nation's application, which concluded at the end of February 2017. Region 6 received responses from the state of Oklahoma and several federal agencies. These responses have been provide to the Citizen Potawatomi Nation for review. Region 6 is also preparing a decision document, following the review process outlined in Attachment A of EPA's 2008 "TAS Strategy." EPA approved the Pueblo of Laguna's TAS application for CWA §303(c) and §401 on December 20, 2016. *Diane Evans, 214-665-6677; Tina Alvarado, 214-665-2709; Jay Przyborski, 214-665-6605*

FINAL RULE FOR THE TREATMENT IN A SIMILAR MANNER AS A STATE FOR CLEAN WATER ACT 303(D) LISTING AND TMDL PROGRAMS

On September 26, 2016, EPA published a final rule to establish a regulatory process for eligible tribes to apply to the EPA for authority to obtain TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program. The rule, "Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act," enables eligible tribes to obtain authority to identify impaired waters on their reservations and to establish TMDLs, which serve as plans for attaining and maintaining applicable water quality standards. The final rule and supporting documents are available at <http://www.regulations.gov> using Docket ID No. EPA-HQ-OW-2014-0622. EPA is hosting two webinars for tribes on the CWA 303(d) TAS rule. The first was held on November 21, 2016, however, a second will be held on December 13, 2016 1:00 pm – 3:00 pm Eastern Time (Registration link: <https://attendee.gotowebinar.com/register/1358329346038076673>)

Tina Alvarado, ORC, 214-665-2709

LEAN PROJECT TO INCREASE EFFICIENCY AND SHORTEN TIMELINE FOR TAS: Staff from the Water Quality Division, the Multimedia Division the Office of Regional Council, and the Office of Environmental Justice, Tribal and International Affairs are collaborating on an EPA LEAN project. William Rhea and Tom Ruiz are facilitating the project. LEAN is a set of principles and methods for identifying and eliminating non-value added activity (or waste) in any process. The goal of this project is to examine and improve the efficiency of EPA's review of applications for Treatment in a similar manner as a State (TAS) for regulatory programs under the Clean Water Act. *Diane Evans, 665-6677; Sam Reynolds, 665-6682; Lindsey Griffin, 665-2797; Aunjane Gautreaux, 665-7127; Tina Alvarado, 665-2709; Randy Gee, 665-8355; Alexandra Olson, 665-8506; William Rhea, 665-6767; and, Tom Ruiz, 665-3153.*

CWA REGULATIONS**BASELINE WATER QUALITY STANDARDS**

In June 2016, EPA initiated pre-rulemaking consultation and coordination with Indian tribes to explore an action that would establish federally-promulgated baseline water quality standards (WQS) for waters on Indian reservations that do not have EPA-approved WQS effective under the Clean Water Act. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on September 29, 2016, to receive specific and clear guidance from tribal governments and other interested parties on a proposed future federal promulgation for tribal water quality standards. (Note: EPA's current thinking is that off-reservation allotment lands for individual members would not be covered, due to difficulties in identifying these parcels with certainty in the near term.) The 90-day comment period on the ANPRM closed on December 28, 2016. EPA received comments from 35 entities, including Indian tribes, states, individuals and other organizations. EPA is reviewing these comments, along with input received from the earlier Tribal consultation periods, and will brief the new administration for further direction. Information is available at: <https://www.epa.gov/wqs-tech/advance-notice-proposed-rulemaking-federal-baseline-water-quality-standards-indian> or through the regulatory docket (<https://www.regulations.gov/docket?D=EPA-HQ-OW-2016-0405>). *Diane Evans, 214-665-6677; Tina Alvarado 214-665-2709*

2017 CWA 404 NATIONWIDE PERMIT REISSUE PROCESS:

The Corps of Engineers (COE) issued a Federal Register Notice on their proposed issuance of 52 Nationwide Permits (NWP) which will become effective March 19, 2017. Nationwide permits are intended to facilitate permitting for categories of activities that are proposed to have minimal impacts to the aquatic environment from use of "fill" material in Waters of the U.S. NWP are issued every five years; the 2012 NWP are in effect at the present time. The FR notice was published June 1 and comments were due August 1, 2016. Currently the COE and EPA are completing the final changes and the COE plan is to issue the NWP 90 days before they are set to take effect.

EPA is the agency required to address water quality certification for tribes that have not received treatment in the same manner as a state for the water quality standards and 401 certification program. In addition to EPA review of the content of the NWP's, we are about to begin the formal consultation process with the tribes to seek their input on how they would like us to address 401 certification of the NWP. The COE Districts will contact tribes with water quality standards to initiate the process of 401 certification by those tribes. EPA is set to begin the consultation process with tribes that have not received treatment in the same manner as a state for the water quality standards. Information will be provided by letter, local meetings, and/or conference call to inform tribes of the process, the ramifications of approving or denying certification of the NWP, and any other concerns tribes may have about the 2017 NWP.

Thomas Nystrom, 214-665-8331

CORPS OF ENGINEERS VS HAWKES SUPREME COURT DECISION REGARDING WETLANDS JURISDICTION

BACKGROUND: Respondents proposed to mine peat in wetlands on their property in Minnesota and sought a § 404 permit from the Corps to discharge material into those wetlands. The Corps issued an approved JD, determining that the wetlands on-site had a "significant

nexus” to the Red River of the North, 120 miles away, and therefore contained “waters of the United States” under the CWA. Respondents challenged the approved JD to the Corps’ Mississippi Valley Division Commander, who remanded the JD for further fact-finding; the Corps District reaffirmed its initial determination that the property contained “waters of the United States.” Respondents challenged the approved JD in District Court under the American Procedures Act (APA). Federal District Court held that the JD was not a final agency action and dismissed for want of jurisdiction; the Eight Circuit reversed; the Supreme Court granted certiorari.

Supreme Court Holding: Under § 404 of the Clean Water Act (CWA) and its implementing regulations, a U.S. Army Corps of Engineers (Corps) approved jurisdictional determination (JD) of whether a property contains “waters of the United States” is a final agency action under § 704 of the APA, subject to immediate judicial review.

Implications for Enforcement: The holding in *Hawkes* will have no direct impact on current enforcement cases. However, the decision highlights the continued importance of having a strong administrative record prior to issuing an administrative order under the CWA, as well as strong evidence to establish a prima facie case before filing an administrative complaint or referring a matter to the Department of Justice. In response to the *Hawkes* decision, on June 24, 2016, EPA and the Corps issued interim guidance finding it essential that the documentation and administrative record developed to support JDs be complete and thorough; the agencies are continuing to develop further guidance considering options for responding to the implications of the decision.

Thomas Nystrom, 214-665-8331

WATERS OF THE UNITED STATES

EPA Administrator Gina McCarthy and Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy signed the Clean Water Rule, “Definition of Waters of the United States” on May 27, 2015, clarifying the types of waters that are jurisdictional under the Clean Water Act. The rule became effective on August 27, 2015, 60 days after its publication in the Federal Register on June 29, 2015. After the rule’s publication, numerous lawsuits were filed challenging the regulation, and on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the Clean Water Rule nationwide, pending further action of the court.

However, on February 28, 2017, President Trump issued an Executive Order directing the Administrator of the EPA and the Assistant Secretary of the Army for Civil Works to review the Clean Water Rule and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law. EPA and the Army intend to immediately implement the Executive Order and publish a joint Notice of Intention to review and rescind or revise the Clean Water Rule in the *Federal Register*. The Notice of Intention is signed by both EPA Administrator E. Scott Pruitt and the Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works, Douglas W. Lamont.

More information about the rule, including the Executive Order and Notice of Intention (currently pre-publication version) can be found at: www.epa.gov/cleanwaterrule.

Alison Fontenot, 214-665-7482

EPA NATIONAL LAKES ASSESSMENT SURVEY

The EPA National Lakes Assessment (NLA) will take place late spring through the summer of 2017. The NLA is a statistical survey of the condition of the nation's lakes, ponds and reservoirs. Sites are randomly selected. The study is designed to answer such questions as: what is the extent of lakes supporting a healthy biological condition?; what proportion of lakes support recreation?; what are the primary stressors to lake resources and how widespread are these stressors?; and, as a nation, is the quality of our lakes getting better, worse, or staying the same? As has been R6's past practice, tribes will be notified if a sampling site on a tribal lake is selected. Notifications will include solicitations for permission to access the lake site as well as an invitation to participate in both the sampling event and training for the 2017 NLA. The training event will occur in mid-April, 2017 in Broken Bow, OK. Please note that while there is no cost to attend the training, EPA does not cover lodging and per diem for the 3-day event. For more information on all of EPA's national aquatic resource surveys, including results of past surveys, please visit: <https://www.epa.gov/national-aquatic-resource-surveys>, or contact me directly. **Robert Cook, 214-665-7141.**

Multimedia Division

Pesticides, Toxics, Underground Tanks Branch

New and Upcoming Regulations

Certification and Training Rule for Applicators of Restricted Use Pesticides (RUPs):

On January 4, 2017, the EPA issued a new Certification of Pesticide Applicators rule. EPA is changing to the rule to improve the competency of certified applicators of RUP by: establishing new standards for certification, such as minimum age and examination standards for commercial applicators and more specific requirements for establishing competency of private applicators; establishing a uniform national certification period for private and commercial applicators and minimum requirements for recertification programs; and establishing new certification categories to address specific high-risk application methods. The rule also impacts Tribes that operate certification programs. The impact on applicators and Tribes will vary based on the current tribal requirements. The effective date of the rule is uncertain at this time. **Greg Weiler, 214-665-7564**

Agricultural Worker Protection Standard (WPS): In 2015, the EPA revised the 1992 Agricultural Worker Protection Standard regulation to increase protection from pesticide exposure for agricultural workers and their families. Some of the major changes include: annual mandatory training to inform farmworkers on the required protections; expanded training to reduce take-home exposure from pesticides on work clothing; and first-time ever minimum age requirement that children under 18 are prohibited from handling pesticides. The Louisiana State University Extension Service developed a presentation on the revised Standard that has been approved by the Agency and is available for others to use. To schedule a presentation by the LSU Extension Service, contact Kimberly Pope at (225) 578-3018. **Eugene Thilsted, 214-665-2782**

New UST Regulations: The EPA strengthen the federal underground storage tank (UST) requirements with the publication of the new final UST regulations on July 15, 2015, with an effective date of October 13, 2015. These new regulations provide additional protections for those UST facilities on Indian land. Deadlines for requirements taking effect were October 13, 2015, for a few requirements, April 11, 2016, for others and finally October 13, 2018, for the remaining requirements.

The new regulations include: adding secondary containment requirements for new and replaced tanks and piping and adding under dispenser containment that is liquid tight on the sides and bottom; adding periodic operation and maintenance requirements for UST systems; removing deferrals for emergency generators tanks, airport hydrant systems and field-constructed tanks; adding new release detection technologies; and requiring operator training.

Several new UST facilities have been constructed on tribal lands, which had to meet the new secondary containment requirements, and one emergency generator UST was recently

constructed in Oklahoma. Under the new construction requirements these new facilities will provide better protection from petroleum leaks into the environment, by catching and notifying of leaks prior to the leak reaching the environment.

In addition, the new regulations require training for 3 classes of operators at all UST facilities: Class A, B and C. The training must be completed prior to October 13, 2018. OUST has prepared compliance assistance publications and notified all Tribes of their availability. OUST is also working on a certification test that must be taken to obtain a certification certificate. In Region 6 our two funded consortia are providing training to the Tribes to enable them to pass the certification test. **Larry Thomas, 214-665-8344**

Tribal Outreach and Education

Tribal Pesticide Training, Pojoaque, NM: As part of EPA Region 6 States and Tribal Coordination and Communication efforts, the New Mexico Department of Agriculture conducted a pesticides training for tribal communities in Pojoaque, New Mexico. The training included basic safety, laws, calibration, proper use, and other topics. The training took place on February 21-22, 2017, with presentations, handouts, calibration buckets and other safety equipment items to take home for 40 participants. EPA Region 6 Pesticide Program staff worked with NMDA and Eight Northern Indian Pueblos Council to set up this training. **Elizabeth Reyes, 214-665-3163**

Pollinator Protection: Changes in the "Policy to Mitigate Acute Risk to Bees from Pesticide Products" were released January 2017. Changes primarily shift the focus from the hazard that might be exhibited by the product to the potential risk that might be exhibited by the product. The policy only applies to products that meet set criteria. When these criteria are met, the application restrictions must be put on the pesticide label for that use. The label restriction only applies when: the target crop is in bloom; a contract exists for a pollination services to the target crop; and, managed bees are present under contract for pollination services to the target crop. **Eugene Thilsted, 214-665-2782**

Indoor Air Quality (IAQ) Technical Review: Kaw Nation, requested IAQ technical assistance and outreach/education material from EPA Region 6 IAQ office in order to create awareness of possible contaminants of indoor air quality in their tribal communities. EPA also provided technical review assistance to the Kaw Nation Indoor Air Quality Assessment Quality Assurance Project Plan. **Mark Berry, 214-665-3183**

Lead Based Paint Program: EPA Region 6 lead based paint program will partner with the Children's Environmental Health program and the Pediatric Environmental Health Specialty Unit to offer lead based paint outreach and training. Dates and locations are yet to be determined. **Mike Adams, 214-665-6711**

Program Implementation

Federal Certification of Applicators of Restricted Use Pesticides (RUP) in Indian country: On February 6, 2014, EPA issued a federal certification plan that allows the use of RUPs in Indian country by trained, tested, and certified applicators. The plan also allows EPA to regulate the sale and distribution of RUPs in Indian country. The certification requirements for RUPs help assure that RUP applicators are competent to use these hazardous pesticides as safely as possible. To date, Region 6 has processed over 80 applications from applicators in New Mexico, Texas, Louisiana, Arkansas, and Oklahoma. Outreach is on-going and will continue in Region 6 Indian Country and states. **Greg Weiler, 214-665-7564**

Tribal Underground Storage Tanks (UST) Inspections: During FY2017, EPA Region 6 will inspect 40 UST facilities operated on Tribal lands. Individual notification for these inspections is sent to the owner/operator and the Tribal environmental offices 30 days before the inspection. The operators of these facilities are provided compliance assistance during the inspections. Compliance at Region 6 tribal facilities remains high, at over 88% for the last 3 years. **Greg Pashia 214-665-8439, Larry Thomas 214-665-8344, Heather Mann 817-291-9106**

Grants

Pesticide Program Grants: Cooperative agreements were awarded to two tribal consortia, the Intertribal Environmental Council (ITEC) and the Eight Northern Indian Pueblos Council (ENIPC), to assist member Tribes in building capacity to establish and maintain pesticides programs. The goal of the tribal pesticides program is to make Tribes aware of the benefits and risks of pesticides and the requirements for their safe use, thereby safeguarding human health and the environment. **Lee McMillan, 214-665-6404**

Lead Paint Program Grants: The Cherokee Nation of Oklahoma was awarded a grant to conduct a Lead Based Paint Program. The focus of the program is maintaining the appropriate infrastructure to successfully administer and enforce the lead based paint program; provide training for lead inspectors; conduct inspections of licensed contractors engaged in lead-based activities and taking appropriate enforcement when needed. **Mike Adams, 214-665-6711**

UST Grants: The Intertribal Environmental Council (ITEC) and the Eight Northern Indian Pueblos Council (ENIPC) were awarded grants to provide compliance assistance to tribal UST owners and operators. The work of these two organizations has been instrumental in maintaining a high compliance rate at EPA Region 6 Tribal facilities. **Audray Lincoln 214 665-2239**

Hazardous Waste Branch

New and Upcoming Regulations

Hazardous Waste Generator Improvements Final Rule

This rule makes various changes to the hazardous waste generator regulatory program to improve its clarity and effectiveness. One improvement consolidates all of the hazardous waste generator regulations, where appropriate, in Part 262 of Title 40 of the Code of Federal Regulations. Another improvement requires small and large quantity generators to include additional information on container labels to better communicate risks associated with its contents. In order to provide generators with greater flexibility in complying with the RCRA regulations, another improvement allows generators to maintain their regulatory status even though, because of an episodic event, they moved into a higher regulatory status temporarily. This improvement allows episodic generators to follow streamlined requirements that are fully protective of human health and the environment. The final rule was published in 81 FR 85732 on November 28, 2016, with an effective date of May 30, 2017. *Kishor Fruitwala, 214-665-6669.*

Tribal Consultation and Coordination

Fort Wingate Depot Activity, New Mexico: Fort Wingate Depot Activity (FWDA) closed under Base Realignment and Closure (BRAC) in 1993. Closure and post-closure is managed under an NMED 2005 state Resource Conservation and Recovery Act (RCRA) permit for closure and post-closure. Investigation and remediation work continues very actively. Base size at closing was 21,131 acres. Most of the facility is scheduled to be returned to two Tribes, the Navajo Nation and the Pueblo of Zuni, with division of the lands recently resolved (see below). Navajo lands and communities are adjacent to the facility, and both Tribes have had historic presence there. Very early in the base closure process the two Tribes were invited to be active participants in the process, attending the Base Closure Team (BCT) meetings and giving input. Strong Tribal and BIA participation continues to this day. Staff from Rep. Lujan and Sen. Udall attended the November 2016 BCT meeting in Gallup.

The 2005 RCRA closure/post-closure permit issued by NMED included specific requirements for consultation with the Tribes in development of the Community Relations Plan, and prior consultation with the Tribes on work plans and reports. Posted warning signs are in English, Spanish, Zuni, and Navajo languages. Intrusive work is done in consultation with the Tribes' experts in order to preserve archeological sites, historic sites, and cultural resources.

The Army notified the stakeholders at the November 2014 BCT meeting that the FWDA project has been put on a funded, accelerated cleanup schedule, with the goal of having all major cleanup completed in 2020. This acceleration may allow transfer of the facility to the Tribes up to 10 years earlier than previously expected. Acceleration of the schedule shortened Tribal document review times, but the Tribes accepted the change.

Section 2829F of the FY2017 National Defense Authorization Act, signed 12/23/2016, provides for the return of the vast majority of the former FWDA land parcels to the two Tribes, in designated parcels, as cleanup is completed under the RCRA permit. Part of this land, currently

used by DoD for the Fort Wingate Launch Complex, will not be transferred until DoD no longer needs it. Some transfers are expected in 2017. *Laurie King, 214-665-6771.*

Facility Specific Information

Los Alamos National Laboratory Hexavalent Chromium Groundwater Plume, New Mexico: Potassium dichromate was used in the cooling towers at some of the Los Alamos National Laboratory (LANL) power plants. The cooling water was periodically discharged to adjacent canyons. It is estimated that up to 72,000 kg of hexavalent chromium cooling water was discharged into Sandia Canyon from 1956-1972. The discharged water traveled downstream approximately 2 miles to an infiltration point in Sandia Canyon, where hexavalent chromium has contaminated the regional aquifer, which is approximately 1,000 feet below ground. LANL first discovered the groundwater plume in late 2005. In August 2015, LANL installed a groundwater monitoring well on San Ildefonso property to determine if the hexavalent chromium groundwater plume had migrated onto Pueblo property. Samples taken in September and October of 2015 from this monitoring well (SIMR-2) detected hexavalent chromium at 4 and 5 ppb (New Mexico Environment Department (NMED) standard is 50 ppb). It should be noted that the new monitoring well is actually located side gradient to the plume (the true down gradient location is on San Ildefonso sacred grounds). In May 2015, LANL submitted an Interim Measures (IM) Work Plan to NMED to address the chromium plume, which includes the extraction and treatment of the chromium contaminated groundwater. In February 2016, EPA Robert S. Kerr Laboratory (located in Ada, OK) reviewed and provided comments on the IM work plan per NMED's request. The chromium plume control IM Work Plan was approved by NMED and six new monitoring wells/piezometers were installed within and near the Cr plume. Data from these new monitoring points indicate that the 50-ppb plume boundary is more extensive than previously thought which may alter the scope of the IM in terms of plume control. The plume control plan will consist of 3 extraction wells and 6 injection wells. LANL needs to install one additional injection and extraction well to complete the plume control plan. *Laurie King, 214-665-6771.*

Sandia National Laboratories (SNL) Mixed Waste Landfill (MWL), New Mexico: In November 2015, the Pueblo Isleta contacted EPA Region 6 regarding the safety and status of the MWL. EPA Region 6 held a conference call with Isleta in December 2015, to discuss their concerns. The New Mexico Environment Department (NMED) agreed to hold a briefing with Isleta to provide the regulatory history and current status of the site. A mutually agreed briefing date has not yet been determined. EPA expects to have another call with Isleta after they meet with NMED.

The MWL is located on Kirtland Air Force Base, five miles southeast of the Albuquerque airport. It is a 2.6-acre site which operated from 1959 to 1988 as a disposal area for low-level radioactive waste and minor amounts of mixed waste generated by SNL research facilities.

The MWL has been extensively studied and discussed. Twenty-five years of monitoring and site characterization show no evidence of groundwater contamination. Groundwater, soil, and air data shows concentrations of potential contaminants do not pose a risk to human health or the environment for current and projected future uses. Monitoring is ongoing.

In 2004, the NMED Secretary of the Environment issued a Compliance Order on Consent for the MWL. In 2005, the Secretary issued a Final Order which required fate and transport modeling, a Corrective Measures Study and Implementation Report, installation of an evapotranspiration cover, and development of a Long Term Monitoring and Maintenance Plan (LTMMMP). The cover was installed in 2009 to prevent erosion and animal intrusion. The LTMMMP was approved in 2014. In February 2016, the NMED Secretary issued a Final Order which affirmed that it is safest to leave the MWL waste in place, and granted status as Corrective Action Complete for a number of other sites. This Order reiterated that the LTMMMP requires completion of a comprehensive review and report every five years to evaluate the effectiveness of the current remedy. The Order required expansion of the scope of the five-year review to also evaluate excavation, removal and disposal of the MWL. The first review is due in 2019. The Order also required that SNL provide NMED and the interveners all records of wastes in the MWL. NMED acknowledged receipt of the document titled Historical Records Disclosure Affirmation: Contents of Solid Waste Management Unit 76, Mixed Waste Landfill, Sandia National Laboratories, May 2016. *Laurie King, 214-665-6771.*

Grants

The Office of Land and Emergency Management at EPA Headquarters annually awards a limited number of grants to Tribes under the statutory provisions of the Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management Grant Program for Tribes for the development and implementation of hazardous waste programs and for building capacity to address hazardous waste management in Indian country. In 2016, the Kickapoo Tribe of Oklahoma was awarded \$82,666 to implement their project to create an inventory of hazardous waste used and stored by tribal departments, facilitate the beneficial reuse of hazardous wastes between different departments, coordinate two hazardous waste training events for staff, initiate a used oil collection program for the Maintenance Department, and host a household hazardous waste collection event for Tribal members which will include community education about household hazardous waste reduction, safe use and storage and proper disposal. We do not currently have information from EPA HQ about the availability of Tribal grant funds for FY17. These grants are usually announced in April. *Maurice Hill, 214-665-8523.*

Air Programs Branch

Current and Upcoming Regulations

Designations under the 2015 Ozone Standard: On October 1, 2015, EPA strengthened the National Ambient Air Quality Standard (NAAQS) for ground-level ozone to 70 parts per billion (ppb), based on extensive scientific evidence about ozone's effects. On February 29, 2016, EPA sent letters to the Tribes, inviting them to participate in the designations process and to offer consultation. We did not receive any requests for consultation from the Tribes in Region 6. As required by the Clean Air Act (CAA), EPA anticipates making final designations under the revised standards by October 1, 2017, and we expect those designations will be based on 2014-2016 air quality data. Tribes were invited to submit to EPA their recommendations for area

designations within their jurisdictional boundaries. We did not receive recommendations from the Tribes in Region 6. To view all the recommendations received by EPA, please visit <https://www.epa.gov/ozone-designations>. Based on preliminary ozone monitoring data for 2014 to 2016, none of the Tribal monitors within Region 6 are violating the new standard. The Governor of Texas recommended that El Paso, with the exception of tribal lands, be designated as nonattainment. The EPA's evaluation of El Paso County will include the tribal lands. We plan to announce our proposed designations early in June 2017, providing a 30-day public comment period. For additional information on this designations process, including guidance and data, please visit our website at <https://www.epa.gov/ozone-designations>. *Carrie Paige, 214-665-6521.*

Proposal to Retain the Lead Standard: On September 16, 2016, based on its review of the air quality criteria for lead (Pb), EPA issued a final rule to retain the existing 2008 standards without revision. The Pb standard for ambient air is 0.15 micrograms per cubic meter of air (3-month average). To view the final rule and additional information, please visit www.epa.gov/lead-air-pollution/national-ambient-air-quality-standards-naaqs-lead-pb. *Guy Donaldson, 214-665-7242.*

Designations for Sulfur Dioxide: EPA Region 6 is currently proceeding with designations for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) in four phases: 1) Existing monitoring data; 2) Consent Decree (CD) listed sources; 3) Data Requirement's Rule (DRR) air modeling pathway; 4) and, air monitoring pathway for all remaining sources. One of the areas that EPA proposed to designate nonattainment under phase 2 was the area in the vicinity of the OG&E Muskogee plant. EPA, however, did not finalize a designation for this area. We are considering whether the company's planned switch to natural gas for two of the units can remove the need finalize a nonattainment designation.

At this time, EPA is working on phase 3, which will be completed by December 31, 2017. On August 21, 2015, EPA published the SO₂ Data Requirements Rule (DRR). For phases 3 and 4, the DRR sets a process and timetable for air agencies to characterize ambient air quality by either establishing ambient monitoring sites, conducting air quality modeling, or alternatively establishing a federally enforceable emission limit requiring SO₂ emissions to be below the 2,000 tons per year threshold.

The CD requires EPA to designate areas characterized through modeling and those with sources taking a federally enforceable emission limit by December 31, 2017 (i.e., Round 3, or phase 3). The CD also requires EPA to designate areas that are being characterized through air monitoring by December 31, 2020 (i.e., Round 4 or phase 4).

- There are 20 Sources in Region 6 subject to the December 31, 2017, designation deadline: 18 Sources States committed to model, and 2 sources for which States established federally enforceable SO₂ limits. Region 6 is currently in the process of characterizing these sources and delineating the designation areas for each source.
- We received modeling for 15 sources: Total of 12 modeling analyses; no modeling was submitted for 3 sources in Louisiana.
- The Four Corners Steam Electric Station, located in the Navajo Nation within San Juan County, New Mexico, is being evaluated for the December 21, 2017, deadline. Region 9 is

taking the lead in designating the area surrounding this source. There are no other sources in Region 6 that are being evaluated for the December 21, 2017, deadline that are on Indian country, but some are close. These sources are: San Juan Generating Station located in San Juan County, New Mexico; Continental Carbon- Ponca City Plant located in Kay County, Oklahoma; Orion Engineered Carbons- Ivanhoe Carbon Black Plant, Columbia Chemicals- North Bend Plant, and Cabot Corp- Canal Plant located in St. Mary Parish, Louisiana; and CLECO Power- Brame Energy Center located in Rapides Parish, Louisiana.

Tribes are welcome to contact Region 6 if they are interested in consultation or participating in further discussions with EPA about the designation process. **Technical Contacts: James E. Grady (214) 665-6745 and Dayana Medina (214) 665-7241; Legal Contact: Josh Olszewski (214) 665-2178.**

Advance Program: The Advance Program continues to assist attainment areas that want to work with EPA to take proactive, local steps to improve air quality. Currently, 44 areas are actively participating in the Advance Program across the nation; 26 of these are participating in Ozone Advance, 11 are participating in PM Advance, and 7 are participating in both Ozone and PM Advance. Seventeen areas are participating across the EPA Region 6 states; of these, 13 are participating in Ozone Advance, 1 is participating in PM Advance, and 3 are participating in both Ozone and PM Advance. One Tribal participant, the Inter-Tribal Council of North Eastern Oklahoma, has joined with respect to the greater Joplin, MO, area along with a coalition of other organizations. Tribes can become involved in the Advance Program either by joining directly or indirectly, by providing support to organizations who have joined. Please visit our website for updates on participant activities, program information and resources (funding opportunities, webinars and more!): <https://www.epa.gov/advance>. **Ken Boyce, 214-665-7259.**

EPA also assists individuals with information on Residential Wood Burning through the Burn Wise Program, please visit: <https://www.epa.gov/burnwise>. **Randy Pitre, 214-665-7299.**

Texas and Oklahoma Regional Haze FIP: On January 5, 2016, EPA finalized an action to partially approve and partially disapprove a revision to the Texas State Implementation Plan (SIP) and to partially disapprove a revision to the Oklahoma SIP submitted in February 19, 2010, to address regional haze. This action also included Federal Implementation Plans (FIPs) for Texas and Oklahoma to remedy these deficiencies. The Texas FIP implements SO₂ emission limits on 15 Texas coal fired power plant units, located at 8 facilities in Texas, as part of a long-term strategy for making reasonable progress at three Class I areas in Texas and Oklahoma. It also sets new Reasonable Progress Goals (RPGs) for the Big Bend, the Guadalupe Mountains and substitutes Texas' reliance on the Clean Air Interstate Rule (CAIR) to satisfy BART requirements at its EGUs with reliance on CAIR's successor, the Cross-State Air Pollution Rule (CSAPR). The Oklahoma FIP sets RPGs for the Wichita Mountains Class I areas. This action is a continuation of the December 13, 2011, Oklahoma FIP, in that it covers EPA's evaluation of Oklahoma's reasonable progress requirements which EPA previously did not act upon. Due to the unresolved status of the CSAPR remand, EPA was unable to process the Best Available Retrofit Technology (BART) requirements for Texas power plants in the final action. EPA is under a consent decree with environmental groups to finalize action on Texas BART by September 9, 2017. See below for an update. **Joe Kordzi, 214-665-7186.**

Texas BART FIP: On January 4, 2017, EPA proposed an action concerning the BART requirements of the Regional Haze Rule. We proposed SO₂ emission limits for 29 Electricity Generating Units (EGUs). This includes emission limits corresponding to the installation of Sulfur Dioxide (SO₂) scrubbers at 12 EGUs, emission limits corresponding to the upgrading of scrubbers at 4 EGUs, and an emission limit corresponding to the maintenance of scrubbers at 2 EGUs. We proposed PM limits for 11 EGUs that either fire gas exclusively, or fire gas in conjunction with fuel oil. We do not anticipate that any additional controls will be needed. Our proposed limits are expected to reduce emissions of SO₂ from 16 EGUs and would cut emissions from approximately 89 to 98 percent. We estimate our FIP will result in a reduction of over 194,000 tons of SO₂ per year. We recently extended our public comment period by 60 days to May 5, 2017. Under court ordered consent decree, we must finalize our decision by September 9, 2017. *Guy Donaldson, 214-665-7242.*

New Mexico Regional Haze Five-Year Progress Report SIP: On March 14, 2014, the EPA received the five-year regional haze progress report SIP from New Mexico. The EPA proposed approval of the plan on October 23 2015. We are currently evaluating comments and expect to finalize action in 2017. *Guy Donaldson, 214-665-7242.*

Tribal Consultation and Coordination

Treatment as a State (TAS) for the Clean Air Act (CAA): On September 30, 2014, the Quapaw Tribe of Oklahoma submitted an application for TAS for CAA authority under Section 105, Section 505(a)(2), and any additional provisions of the CAA for which no separate Tribal program is required. On February 19, 2015, the Quapaw Tribe amended their application requesting CAA authority under Section 105, Section 505(a)(2), Section 107(d)(3), and CAA §126(a). Region 6 has conducted its review and deemed the application complete. The Quapaw Tribe was notified of completion of the review and the appropriate governmental entities were invited to provide comments on February 15, 2017. The public comment period ends March 17, 2017.

Currently, four Tribes in EPA Region 6 have approved TAS for CAA authorities: The Cherokee Nation, the Pueblo of Laguna, Kaw Nation, and the Peoria Tribe of Oklahoma. *Frances Verhalen, 214-665-2172.*

Four Corners Air Quality Oversight Group: The Four Corners Air Quality Oversight Group met for the Fall 2016 meeting on December 1, 2016, in Farmington, New Mexico. Discussion topics included trends analysis for air monitoring, updates from Navajo Nation and The Southern Ute Indian Tribe, environmental programs for Conoco and Public Services Company of New Mexico, and a discussion on the Clean Power Plan and Western States Energy. *Frances Verhalen, 214-665-2172.*

Tribal Permitting

New Source Review Regulatory Update: The promulgated EPA Tribal minor new source (mNSR) permitting rules in Indian country, together with existing rules for permitting major

sources in areas of Indian country that currently meet clean air health standards (the Prevention of Significant Deterioration program), are similar to those being implemented by states. Minor sources are those that have the potential to emit a number of pollutants in amounts above the minor NSR thresholds established in the 2011 rule, but below major NSR thresholds. These thresholds vary by pollutant, and the source location if the area is designated as attainment or nonattainment for a National Ambient Air Quality Standard (NAAQS). Currently there are no non-attainment areas for tribal nations in Region 6. *It should be noted that all Federal permitting actions for major and minor NSR programs must address Threatened and Endangered Species and the Preservation of National and Historic Properties. A guidance document on addressing these acts can be found at: https://www.epa.gov/sites/production/files/2016-05/documents/procedures_to_address_threatened_and_endangered_species_and_historic_properties.pdf*

The current promulgated rule updates are:

1. On June 3, 2016, the U.S. Environmental Protection Agency (EPA) finalized the federal implementation plan (FIP) to the Federal mNSR Program in Indian Country for *oil and natural gas production*. <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf> The FIP, effective October 3, 2016, is used instead of site-specific mNSR preconstruction permits in Indian country and incorporates emissions limits and other requirements from eight New Source Performance Standards (NSPS) for the oil and natural gas industry. This sector is defined in the rule for oil production that includes all operations from the well to the point of custody transfer to an oil transmission pipeline or other means of transportation to a petroleum refinery. For the natural gas sector, this includes all operations from the well to the final end user. Specifically, the FIP applies to new true minor sources and minor modifications at existing true minor sources in the *oil and natural gas sector* throughout reservation areas in Indian country and any other areas of Indian country for which a Tribe or EPA has demonstrated that the Tribe has jurisdiction. The FIP requires the owners/operators to fill in two registration forms; one which must be filed with EPA 30 days prior to construction, and obtain EPA's approval for Section 106 (NHPA) and Section 7(a) (ESA) of the Act. The second form needs to be filed within 60 days of operation. These forms are available at: <https://www.epa.gov/tribal-air/final-federal-implementation-plan-oil-and-natural-gas-true-minor-sources-and-amendments>

Also in this federal action, EPA clarified the meaning of “adjacent” for the oil and gas industrial sector that is used to determine the scope of a “stationary source,” commonly known as aggregation of emission sources for defining major NSR or Title V sources, which was effective on August 2, 2016. See FR 35623 at: <https://www.federalregister.gov/articles/2016/06/03/2016-11968/source-determination-for-certain-emission-units-in-the-oil-and-natural-gas-sector>

2. On September 16, 2016, EPA finalized general permits for six true minor source categories: concrete batch plants; small boilers and emergency engines of 1000- 1500hp; stationary spark ignition engines; stationary compression ignition engines; graphic arts/ printing operations; and, sawmill facilities. General permits streamline the existing minor source NSR permitting requirement and minimize the burden on reviewing authorities and sources. General permits standardize requirements that apply to multiple stationary source categories with similar emissions characteristics in one document. The owner of one of these types of facilities in Indian country would need to apply to EPA to be covered by the applicable general permits. Application forms and instructions are available at: <https://www.epa.gov/tribal-air/general-permits-and-permits-rule-final-action-6-source-categories-september-16-2016>

Tribes are encouraged to review training provided by the Institute for Tribal Environmental Professionals (ITEP) as well as the basic training information on the EPA website. Upon request, Region 6 can provide some assistance to Tribal permit applicants for the minor NSR permits.

Region 6 Tribal Permit Status: All EPA proposed permits will be noticed via e-notice on the Region 6 webpages. An e- notice will also be provided at the time of issuance. We also provide early notification to the surrounding tribal nations that may wish to consult on a permitting action in accordance with the EPA Region 6 Consultation and Coordination Policy with Federally Recognized Indian Tribes.

Major Tribal Permits: To date, there are 5 existing Part 71 permits and one application for a Part 71 permit in New Mexico. EPA is currently processing the initial application for a “pigging operation” on Jicarilla tribal land as well as the two Part 71 compressor station permit renewals. The status of these permits can be found at: <http://www.epa.gov/caa-permitting/part-71-operating-permits-tribal-lands-epas-south-central-region>

Synthetic Minor Permits: EPA has issued 3 synthetic minor permits to date. On November 11, 2016, EPA issued the New Mexico Gas Company compressor station permit on the Pueblo of Laguna tribal lands. EPA is currently processing an oil and gas facility permit for XTO Energy Inc. on the Jicarilla Apache lands.

Minor NSR Sources Registration: To date, there have been a total of 156 registrations submitted, many from oil and gas facilities. *It should be noted that any registered source that makes a change to their source which results in a change of their operation and/or emission changes needs to re-register their facilities with EPA in accordance with 49 CFR §160(c).*

Also, please note that the use of Air Curtain Incinerators for the combustion of wood and brush material will require the filing of a registration form and may also require a federal operating permit. Bonnie Braganza, 214-665-7340.

Air Monitoring

Technical Systems Audit: EPA conducted the technical system audit for the Delaware Nation in October, 2015. The audit team interviewed technical staff and reviewed the operation and procedures for their air monitoring network. *Kara Allen, 214-665-7333.*

Oil & Gas Air Monitoring: The Alabama-Coushatta Tribe competed nationally for, and was awarded, an EPA Community-Scale Air Toxics Ambient Monitoring grant. The project is for fence line monitoring of hazardous air pollutants such as benzene, toluene, ethylbenzene, xylenes and aldehydes, in the vicinity of oil and gas sites. The Tribe is currently working with a contractor to deploy the monitoring system and collect samples once a week for three years. *Joshua Madden, 214-665-7151.*

Climate Change

Clean Power Plan (CPP) Final Rule Update: EPA announced the CPP Rule to cut carbon pollution from new and existing power plants on August 3, 2015, and published it (along with the proposed rule for the CPP Federal Plan/Model Rules and Trading Program for states) in the Federal Register on October 23, 2015, with closure of the comment period on January 21, 2016. EPA received nearly a million public comments by the end of the public comment period.

Three Tribes fall directly under CPP mandates: the Navajo Nation (Arizona and New Mexico); the Ute Tribe of the Uintah and Ouray (Utah); and, the Fort Mojave Tribe (Nevada), which have one or more electric-generating units (EGUs) on its lands. Rules for Tribes with existing EGUs were written separately into the CPP, though they reflect the overall goal of a 32% reduction in carbon output by 2030.

The CPP would also impact “non-EGU” Tribal communities throughout the U.S. for several reasons: carbon reduction promises to at least slow the progression of climate change, which hits Tribes particularly hard as it impacts their environments, health, and cultural and spiritual well-being. A significant reduction in carbon emissions from power plants nationwide would also reduce emissions of other dangerous pollutants, including mercury and sulfur dioxide. Incentives built into the CPP would enable Tribes that are planning to develop Renewable Energy (RE) or Energy Efficiency (EE) projects to participate in the trading provisions of the final rule, thereby providing potential emission rate credits (ERCs) to states to help them meet their goals (as long as they are connected to the continental U.S. grid and meet other requirements for eligibility). This effort would benefit Tribes both environmentally and economically—and potentially aid in their energy-sovereignty efforts—as they move toward lower-impact power generation and increase energy efficiency within their communities.

A coalition of 26 states and a coal mining company filed lawsuits opposing/challenging the CPP. Those lawsuits are progressing with an en bloc hearing before the U.S. Court of Appeals in Washington, DC. No decision has been announced.

On February 9, 2016, the Supreme Court *stayed* implementation and enforcement of the CPP pending judicial review. The Supreme Court’s decision was not on the merits of the rule.

Key Points

- Implementation and enforcement are on hold.
- Initial submittals (by states **and Tribes**) not required on September 6, 2016.
- EPA will continue to work with states (**and Tribes**) that want to work with us on a voluntary basis.
- For more information, please visit: www.epa.gov/cleanpowerplan

Guy Donaldson, 214-665-7242.

Tribal Funding

FY2017 Tribal Air Funding: In FY2017, EPA Region 6 expects to receive approximately \$1,100,000 in federal funds to support assistance agreements under statutory provisions of the Clean Air Act Section 103 and Section 105. In December 2016, the Office of Environmental Justice and Tribal Affairs (OEJTA) sent a collective email to Tribal Leaders, including a solicitation for proposals for air projects and program activities to be conducted in FY2018. Proposals were due February 28, 2017. As a result, Region 6 received 18 proposals for a total of \$1,896,626 in funding requests.

In March, 2017, all proposals were submitted to a panel of technical and administrative Air Program staff for review and recommendations of approval, partial approval, and non-approval. All applicants will be notified of their specific recommendation and the basis for that recommendation, via email, by May 1, 2017. All awards will be finalized by September 30, 2017.

Note: The Tribal Air Guidance manual, Protecting Tribal Air Quality Options and Opportunities, is available to Region 6 Tribes as a tool to assist in project and grant proposal development for future Tribal Air funding opportunities. Due to changes with EPA's internet, the guidance document is not currently posted. However, an electronic copy of the document is shared with Region 6 tribes, annually, and may be requested throughout the year. *Aunjaneè Gautreaux, 214-665-7127.*

2017 Diesel Emissions Reduction Act (DERA) Tribal Funding: Status of the 2017 tribal funding has not been determined. *William Rhea, 214-665-6767.*

Compliance Assurance and Enforcement Division

Compliance Evaluation Inspections are continuing. The Region will conduct several inspections this fiscal year to verify compliance with existing administrative orders on consent. The Region will also continue to conduct compliance inspections to evaluate systems which have persistent problems and may become subject to enforcement actions. In all circumstances, enforcement will coordinate with the Tribal Nations and Pueblos prior to inspections. We appreciate the efforts made by the Tribal Nations and Pueblos during the last five (5) years to improve compliance rates. There are currently no new facilities on the list of Tribal PWS systems for priority enforcement.

EPA has an inspector operating out of an office in Albuquerque. His name is David Esparza. His primary responsibility is conducting compliance evaluation inspections of potential waste water treatment facilities in New Mexico. If Tribes identify discharge of waste water on their lands we encourage them to contact Mr. Esparza.

Jerry Saunders, 214-665-6470

Superfund Division

TRIBAL CONSULTATION AND COORDINATION

VARIOUS REMOVAL/REMEDIAL ISSUES

Jackpile-Paguate Uranium Mine: On March 3, 2017, EPA attended a Pueblo of Laguna Tribal Council meeting to provide an overview of the results of EPA's aerial radiation and imagery survey of the Jackpile Paguate site and extended boundaries. The site survey showed areas with elevated uranium concentrations. The survey also identified elevated uranium readings coming from the St. Anthony mine which is located to the north/northeast of the Jackpile Paguate site. The data collected will assist EPA in identifying areas of higher priority and establishing zones of interest. Next steps will likely include in-situ sampling with field instrumentation to further refine zones of interest. An EPA point of contact was also provided to assist the Pueblo in developing an indoor air quality and radon abatement program with possible grant funding. Ongoing negotiations with Atlantic Richfield continue, the Potentially Responsible Party and former operator of the site. *John Meyer, 214-665-6742*

VARIOUS REMOVAL/REMEDIAL ISSUES

Quapaw Tribe: The EPA continues to work closely with the Quapaw Tribe and the Oklahoma Department of Environmental Quality (ODEQ) in implementing the Tar Creek Superfund site remedy. Since the awarding of a Remedial Action Cooperative Agreement (CA) in FY2012 for the Catholic 40, the first-ever CA in the nation where a Tribe performed a Superfund remedial action on property that they own, the EPA has continued to award the Quapaw Tribe CAs for remedial actions at Beaver Creek North (CP060), Distal 7 North (Drainage Feature), Distal 10/12, and Distal 13. A CA with the Tribe for the Bird Dog chat base currently being planned.

On April 18-20, 2017, EPA will be presenting at the Institute for Tribal Environmental Professions – Tribal Superfund Working Group Training in Quapaw, Oklahoma. The EPA Region 6 Remedial Project Manager will discuss EPA's experience working with the tribe at the first-ever Tribal-led Superfund cleanup action.

A Bench-Scale Study on the use of soil amendments, lead by the EPA's Environmental Response Team, was recently completed at the Catholic 40 (Quapaw tribal trust land). The purpose of the study is to determine if soil amendments can reduce the bioavailability of cadmium, lead, and zinc. The successful use of soil amendments could reduce the amount of transition zone soils (i.e., native soils underneath chat piles/bases) which would otherwise be excavated and taken to a repository for final disposal. The Quapaw Tribe, with technical assistance from the EPA and the ODEQ, will be implementing long-term performance measures at the Catholic 40 and other distal areas to determine the effectiveness of the soil amendments in meeting the remedial action objectives specified in the 2008 Record of Decision for Operable Unit 4 (Source Material). *John Meyer, 214-665-6742*

AWARD FUNDING

Quapaw Tribe: EPA is preparing to award two separate Cooperative Agreements regarding the remediation of distal areas in the Tar Creek Superfund Site:

- Tar Creek Distal 13 - \$286,569
- Tar Creek Distal 10 & 12 - \$4,896,088

Tony Talton 214-665-7205

Tar Creek: The EPA continues to coordinate with the tribes interested in the Tar Creek Site through periodic meetings and conference calls. On January 17, 2017, a stakeholder meeting was held to discuss site activities. EPA presented information on the draft Data Gap Analysis Report. The next stakeholder update meeting is scheduled for April 10, 2017. Discussions will focus on the comments, responses, and draft field sampling plans. *John Meyer, 214-665-6742*

Wilcox Oil Company: The EPA and ODEQ continue to coordinate with the tribal groups interested in the Wilcox Site. The Inter-Tribal Environmental Council (ITEC), Sac and Fox Nation, Muscogee (Creek) Nation, Cherokee Nation, Bureau of Indian Affairs, and Indian Health Service participate in the site meetings and visits. Since finalizing the site Sample and Analysis Plan, EPA completed field work in October 2016. An Open House community meeting is currently scheduled for April 13, 2017. Prior to the Open House, the EPA and ODEQ are offering to meet with the tribes to discuss questions, comments, progress, and schedule. *John Meyer, 214-665-6742*

New Mexico Abandoned Uranium Mines: Investigations into the impacts on groundwater from legacy mining and milling are continuing. The Phase 1 Ground Water Investigation was released to stakeholders and the public in September 2016. The Phase 2 Ground Water Investigation will be released in summer 2017. The groundwater conceptual site model is scheduled to be released in 2018.

The Ambrosia Lake West Geographic Subarea non-time critical removal assessment was completed in January 2017. The Central Geographic Subarea non-time critical removal assessment began in February 2017. The data is being utilized to prepare Engineering Evaluation/Cost Analysis Reports for these areas.

Coordination meetings are continuing to be held on a quarterly basis with Region 6, Region 9, Navajo Nation, NMED, and NMEMNRD to discuss priorities for current and future removal work in the legacy uranium mining areas. *Ben Banipal, 214-665-7324, John Meyer, 214-665-6742, Ronnie Crossland, 214-665-2721*

Grants Mining District – Five-Year Plan: In late April 2017, EPA will be scheduling meetings with public, tribal, state and federal partners to provide updates on the implementation of the Five-Year Plan and receive feedback on the progress. *Ben Banipal, 214-665-7324*

Rio Puerco Mine – On March 28, 2017, EPA is scheduled to attend a Navajo community meeting at the To'hajiilee Chapter House to provide an overview of the results of EPA's aerial radiation and imagery survey. The information gathered from the survey indicates isolated contamination at the mine site and ponds. Contamination has not migrated towards the

To'hajiilee Chapter. This information was shared with the Navajo Nation EPA, Navajo Nation Department of Justice, and other stakeholders at the March 2, 2017, Tronox Multi-Agency Meeting in Albuquerque. *Ben Banipal, 214-665-7324*

BROWNFIELDS

128A Tribal Response Program Updates:

- Region 6 received FY2017 Funding Requests from six Tribal Response Programs. Four requests were from existing 128a Tribal Response Programs: The Inter-Tribal Environmental Council (ITEC), Eight Northern Indian Pueblo Councils (ENIPC), Absentee Shawnee Tribe and the Kickapoo Tribe of Oklahoma. New requests were received from the Choctaw Nation and the Muskogee-Creek Nation.
- The Region 6 Brownfields Program is partnering with the Region 6 Indian Environmental General Assistance Program to better coordinate and promote grant efficiencies.
- The Office of Brownfields and Land Revitalization (OBLR) will be soliciting the views on the State and Tribal Response Program funding allocation in an effort to improve our annual funding allocation process after the listening sessions. Representatives from OBLR will be holding a listening session in Dallas, Texas on April 6 at the ITEC Tribal Environmental Summit. Written comments may be submitted to Kelly Gorini (gorini.kelly@epa.gov) by May 5. *Tony Talton, 214-665-7205*
- The Tribal Lands and Environmental Forum will be held in Tulsa, OK, August 14-17, 2017.

TARGETED BROWNFIELDS ASSESSMENT ACTIVITIES

Santa Clara Pueblo: The EPA's Brownfields Assessment team met with Dino Chavarria of the Santa Clara Environmental Department the week of March 13th to discuss reuse options for the Bridges Radiator Shop. *Tony Talton, 214-665-7205*

Cochiti Pueblo: In FY 2017, EPA is assisting the Pueblo of Cochiti with contract support/assistance to identify sustainable reuse options for abandoned gravel mine through the Land Revitalization contract and to develop a cleanup plan through the Brownfields Interagency Agreement with US Army Corps of Engineers. *Tony Talton, 214-665-7205*

Management Division

INFORMATION SHARING

BUDGET UPDATE

The Agency is currently operating under our second Continuing Resolution (CR) for FY 2017. This CR provides the Agency with funding through April 28, 2017 and uses FY 2016 Enacted levels as its base. This amount was further lowered by an across-the-board rescission of 0.1901 percent during this latest 20-week period. Overall, we have received approximately 57% of last year's enacted funds for the first seven months of FY2017.

While under the CR, EPA may continue current programs and activities as authorized under the conditions of the FY 2016 Appropriations Act (PL 114-223). New programs, initiatives, or activities not authorized or funded in FY 2016 may not be started. Additionally, all offices have been told to operate in a conservative manner while Congress continues to deliberate over FY 2017 funding levels. Section 110 of the CR Bill instructs agencies to avoid any high rates of spending that could impinge on final funding decisions. The Agency currently is not receiving any indication on what to expect with our funding levels for the remainder of the fiscal year.

Heather Chandler, 214-665-8032

QUALITY ASSURANCE TRAINING

Region 6 will provide Quality Assurance Training in New Mexico in the summer of 2017. Quality Assurance staff is coordinating with Eight Northern Pueblo Indian Council to identify possible dates and locations. ***Don Johnson, 214-665-8343***

Office of Environmental Justice, Tribal and International Affairs

OFFICE AND STAFF UPDATE

Gloria Vaughn and Japhet Cruz-Diaz have joined OEJTIA. Gloria is the Associate Director of Environmental Justice and Japhet is the Bilingual Border Specialist for OEJTIA. EPA Region 6 welcomes Gloria and Japhet to OEJTIA.

TRIBAL FUNDING

Region 6 General Assistance Program (GAP): OEJTIA is currently reviewing FY GAP 2017 applications. The Region received sixty-three applications requesting \$7,866,682 in GAP funding. *Randy Gee, 214-665-8355.*

EPA-TRIBAL ENVIRONMENTAL PLANS

OEJTIA finalized seventeen EPA-Tribal Environmental Plans (ETEPs) by September 30, 2016. OEJTIA is working with tribal partners to finalize thirteen ETEPs by the end of FY 2017 and twelve ETEPs by the end of FY 2018. Regions are required to work with tribal partners receiving Indian Environmental General Assistance Program (GAP) grants to establish ETEPs as outlined in the May 15, 2013 GAP guidance. The ETEPs will contain tribal environmental priorities, how the Region can assist tribal partners in achieving their priorities, and EPA's direct implementation role in Indian Country. *Randy Gee, 214-665-8355.*

TRIBAL CONSULTATION AND COORDINATION

EPA Policy on Consultation and Coordination with Indian Tribes: Opportunities for Consultation: The following tribal consultation opportunities in Region 6 are ongoing:

- *Synthetic Minor Permit for XTO Energy*
- *Initial Title V Permit for Williams Four Corners*

Tribal consultation opportunities can be viewed at www.epa.gov/tribal. *Randy Gee, 214-665-8355*

TAS LEAN PROJECT UPDATE

OEJTIA is partnering with the Region's Water and Multimedia Divisions, Office of Regional Counsel, Citizen Potawatomi Nation, The Quapaw Tribe of Indians, and Kickapoo Tribe of Oklahoma on a TAS Lean project to shorten the approval time of TAS applications. The team has drafted four recommendations, and an update on these recommendations and future work will be provided at the RTOC meeting and Tribal Summit. *Randy Gee, 214-665-8355 and Alexa Olson, 214-665-8506*